(5)

Division Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 124 of 2007.

APPELLANT: (In jail) Tiyajan Son of Doohan Gond, aged about 25 years Resident of Village - Biramkela, P.S.- Batauli, Distt. – Surguja (C.G.)

10/07

09.02.07

Smt. Ranjana Agrawal Advocate

R. to D.R. (J)

VERSUS

RESPONDENT: State of Chhattisgarh. through P.S Batauli

CONVICTION:	**SENTENCE**
U/S 302 of I.P.C.	R.I. for life and fine of Rs.1000/- in default of payment next R.I. for 3 months.

CRIMNAL APPEAL U/S 374 (2) OF THE CRIMINAL PROCEDURE CODE 1973

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(36)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 124/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT (In Jail)	Tiyajan, Son of Doohan Gond, aged about 25 years, Resident of Village Biramkela, P.S. Batauli, Distt. Surguja (CG).
		-Versus-
	RESPONDENT	State of Chhattisgarh, Though P.S. Batauli.

(Appeal under Section 374 (2) of the Cr.P.C.)

Division Bench :

Hon'ble Mr. Justice L.C. Bhadoo &
Hon'ble Mr. Justice Dhirendra Mishra, JJ

22-6-2007

Shri R.K. Jaiswal, counsel for the appellant.

Shri U.N.S. Deo, Addl. Public Prosecutor and Shri Akhil Mishra, Panel Lawyer for the State.

Record has already been received.

Heard on M.(Cri.).P.No.322/2007 for condonation of delay in filing the appeal.

As per the office report there is a delay of 2571 days in filing the appeal.

For the reasons mentioned in the application {M.(Cri.).P.No. 322/2007}, the same is allowed and the delay in filing the appeal is condoned.

Heard on the question of admission.

The appeal is **admitted** for consideration.

The accused is in detention since 8-5-1998 thereby he is in detention for about nine years. Therefore, the appeal is heard for final disposal.

Oral judgment dictated on *Dais*.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. 124/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

L.C. Bhadoo. J.

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 27-11-1999 passed by the Sessions Judge, Surguja, Ambikapur, in Sessions Trial No.226/98 whereby he has been held guilty under Section 302 of the Indian Penal Code for committing murder of his wife Pavitri Bai and sentenced him to undergo imprisonment for life & to pay a fine of Rs.1,000/-, in default of payment to further undergo imprisonment for three months.

2) The case of the prosecution, in brief, is that on 4-5-1998 the accused along with his wife Pavitri Bai, father Doohan Ram & mother Sukini Bai had gone to attend the marriage ceremony in the house of cousin brother of Uday Ram. Accused along with his wife returned to the house prior to his parents. Thereafter, Doohan Ram & Sukini Bai came and went for sleep in their room. In the morning after rising of the sun Sukini Bai woke up and went to the room of the accused and tried to wake up her daughter-in-law. She called her son & daughter-in-law, but there was no response from the room. When she peeped through the hole of the door, she saw the dead body of her daughter-in-law, which was lying on the bed. Seeing this, she raised cries on which Doohan Ram, father of the accused, came and saw the situation. After hearing the scream, Udayram (PW-5) & Sufalsai (PW-6) came and opened the door, saw the body of Pavitri Bai drenched with blood. The accused was not present there, therefore, Doohan Ram lodged the First Information Report (Ex.P/1) on 5-5-1998 at about 9.00 a.m. in the Police Station Batauli. The Investigating Officer left for the scene of occurrence. He prepared inquest (Ex.P/5) on the body of Pavitri Bai. The body of Pavitri Bai was sent for postmortem examination to Primary Health Centre, Batauli vide Ex.P/6 where Dr.Roopsingh Parihar (PW-4) conducted postmortem and prepared report (Ex.P/7). Doctor

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Cr.A. 124/07

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

opined that the cause death was excessive hemorrhage from the injuries and on account of cut of trachea and cervical spine. The death was homicidal in nature.

3) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur, who in turn committed the case to the Court of Sessions Judge, Ambikapur.

4) In order to establish the charge against the accused/appellant, the prosecution examined 7 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence. He stated that he along with his father & mother had gone to attend the marriage ceremony, he was not at his residence in the night, his wife was all alone in the house, he has not committed any offence, he is innocent and he does not know who committed the murder of his wife.

5) Learned Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6) We have heard learned counsel for both the parties.

7) In this case, the only witnesses who saw the accused was not present in the house are Doohan Ram (father of the accused) & Sukini Bai (mother of the accused). In their Police dairy statement, they have stated that accused, Pavitri Bai (wife of the accused) and they i.e. Doohan Ram (father of the accused) & Sukini Bai (mother of the accused) went to attend the marriage at the place of cousin brother of Uday Ram, however, the accused/appellant along with his wife returned to the house prior to them. Thereafter, Doohan Ram & Sukini Bai came and went for sleep in their room. In the morning, Sukini Bai woke up and went to the room of the accused to wake up her daughter-in-law, where she saw the

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मामला क्रमांक C.A. 124/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

dead body of her daughter-in-law, which was lying on the bed, whereas when they were examined before the Court they turned hostile and they have not supported the prosecution case during trial. They have stated that they along with their son went to attend the marriage ceremony, Pavitri Bai was all alone at the house, who committed the murder of Pavitri Bai they do not know. The accused has also stated that on the fateful day he was not at the residence, he went to attend the marriage. These witnesses have been declared hostile and in the cross-examination also the prosecution has not been able to elicit any circumstance which establishes that the accused was at the residence on the fateful night along with his wife Pavitri Bai (since deceased). Therefore, virtually it is no evidence case to establish that the accused was at the residence on the fateful night when the murder of Pavitri Bai was committed.

8) For the foregoing reasons, we are of the considered opinion that the conviction & sentence imposed against the accused/appellant for commission of offence under Section 302 of the Indian Penal Code cannot be sustained.

9) In the result, the appeal succeeds. Conviction & sentence imposed upon the accused/appellant under Section 302 of the Indian Penal Code are set aside; he is acquitted of the said charge. The accused is in detention since 8-5-1998. He be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge